

2004 PILOT ELECTRIC SUPPLY AGREEMENT

WHEREAS, the Massachusetts Legislature has adopted Chapter 164 of the Acts of 1997, (the "Restructuring Act"), which, *inter alia*, (1) allows for competition in the generation and supply of electricity to customers, (2) authorizes municipalities to aggregate the electrical load of electricity consumers within their boundaries, and (3) allows municipal aggregators to formulate an aggregation plan and conduct aggregation programs;

WHEREAS, several municipalities in Barnstable County and Dukes County ("Member Municipalities") have formed the Cape Light Compact ("Compact") and entered into an "Inter-Governmental Agreement of the Cape Light Compact" ("Compact Agreement"), for the purposes, *inter alia*, of acting as a municipal aggregator and negotiating the best rates for the supply of electricity to consumers located on Cape Cod and Martha's Vineyard;

WHEREAS, all twenty-one Barnstable County and Dukes County towns presently belong to the Compact;

WHEREAS, the Compact has developed a Default Service Pilot Project (the "Pilot Project") to aggregate consumers located within the Member Municipalities presently receiving Default Service and to negotiate competitive rates for the supply of electricity for such consumers;

WHEREAS, the Massachusetts Department of Telecommunications and Energy ("DTE") approved the Pilot Project by a letter dated October 23, 2001, as well as in the November 20, 2001 Order on Motion for Reconsideration, both in DTE 01-63;

WHEREAS, the DTE also approved the Pilot Electric Supply Agreement dated March 13, 2002 between the Compact and Mirant Americas Retail Energy Marketing, LP ("Supplier") pursuant to which Supplier agreed to sell All-Requirements Power Supply to Default Service customers pursuant to the Pilot Project through December 31, 2003; and

WHEREAS, the Compact and Supplier desire to enter into a new Pilot Electric Supply Agreement on substantially the same terms and conditions for calendar year 2004.

NOW THEREFORE, IT IS AGREED THAT, the Compact and the Supplier hereby enter into this Pilot Electric Supply Agreement ("Agreement") subject to the terms and conditions below.

ARTICLE 1 DEFINITIONS When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meaning.

1.1 **Aggregation Plan** - The “Cape Light Compact Aggregation Plan” as adopted or amended by the Compact, from time to time, and as approved by the DTE on August 10, 2000 in DTE 00-47. The Aggregation Plan is a plan developed by the Compact to aggregate electric consumers for the primary purpose of negotiating the best rates for the supply and distribution of electricity for such consumers.

1.2 **Aggregation Program** - The Community Choice Power Supply Program is one of the two programs described in, and implemented under, the Aggregation Plan.

1.3 **Agreement** - This Pilot Electric Supply Agreement.

1.4 **All-Requirements Power Supply** - Service under which the Supplier provides all of the electrical energy, capacity, reserves, and ancillary services for firm power supply to Participating Consumers at the Point of Sale.

1.5 **Bankruptcy** means with respect to a Party that such Party (i) ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any corporate action to authorize or that is in contemplation of the actions set forth in this clause (i); or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and, such proceeding is not dismissed within ninety (90) days after the commencement, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any such stay, has not been vacated, *provided that*, notwithstanding the foregoing, the exercise of rights to take over operation of a Party’s assets, or to foreclose on any of a Party’s assets, by a secured creditor of such Party (including the appointment of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.

1.6 **Commercially Reasonable** - Any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations.

1.7 **Compact** - The Cape Light Compact, formed in October 1997, by an intergovernmental agreement under the Massachusetts General Laws and presently consisting of twenty-one (21) towns in Barnstable and Duke Counties and the two counties themselves for which the Compact acts as agent.

1.8 **Compact Agreement** - The Inter-Governmental Agreement of the Cape Light Compact, as in effect on July 31, 1998 and as may be amended from time to time.

1.9 **Counties** - Barnstable County and the County of Dukes County. In the singular, County shall refer to either of the two Counties.

1.10 **Default Service** - As defined in G.L. c. 164, §1 and in orders of the Massachusetts Department of Telecommunications and Energy, as amended or promulgated, as the case may be, from time to time.

1.11 **Distribution Company** - The Commonwealth Electric Company, or any successor company(ies) or entity(ies) providing electricity distribution services in each Member Municipality.

1.12 **DTE** - The Massachusetts Department of Telecommunications and Energy, or any successor state agency.

1.13 **Eligible Consumer** - A residential, commercial, industrial, municipal, or other consumer of electricity who is receiving Default Service from the Distribution Company as of the Effective Date of this Agreement or any consumer who physically relocates into a Member Municipality and would be automatically enrolled to receive electric supply service under the Distribution's Company Default Service tariff. All Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of a Member Municipality, as such boundaries exist on the Effective Date of this Agreement. Eligible Consumers shall not include those consumers who are on Standard Offer Service ("SOS") as of the Effective Date of this Agreement or thereafter. Additionally, consumers who may be temporarily switched to Default Service from SOS or switched to Default Service from competitive supply shall not be considered Eligible Consumers.

1.14 **Effective Date** - The effective date of this Agreement, pursuant to Article 4.2 below.

1.15 **Force Majeure** - Any cause not within the reasonable control of the affected Party which precludes that party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the Compact or a Member Municipality may not be asserted as an event of *Force Majeure* by the Compact or a Member Municipality as the case may be; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

1.16 **Governmental Authority** - Any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, excluding the Compact and all Member Municipalities.

1.17 **Governmental Rule** - Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law.

1.18 **ISO** - The New England Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New England and the bulk transmission of electricity throughout the New England power grid.

1.19 **kWh, kW** - Kilowatt-hour and kilowatts, respectively.

1.20 **Member Municipalities** - The twenty-one (21) towns and two (2) Counties which are presently members of the Cape Light Compact as of the Effective Date of this Agreement. The Member Municipalities include the following towns in Barnstable County: Barnstable, Bourne, Brewster, Chatham, Dennis, Eastham, Falmouth, Harwich, Mashpee, Orleans, Provincetown, Sandwich, Truro, Wellfleet and Yarmouth, and the following towns in Dukes County: Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury. The Compact acts as agent for the Member Municipalities as set forth in Article 2.2 below.

1.21 **Participating Consumer** - All Eligible Consumers, excluding those Eligible Consumers who exercise their ability to opt-out, whether prior to the automatic enrollment or anytime thereafter. A Participating Consumer who chooses to opt-out of the Pilot Project at any time is ineligible to become a Participating Consumer for one year.

1.22 **Parties** - The Compact and Supplier, as the context requires. In the singular, “Party” shall refer to any one of the preceding.

1.23 **Pilot Project** - The Default Service Pilot Project is a municipal aggregation program developed by the Compact pursuant to its Aggregation Plan and Aggregation Program to provide choice and savings for Eligible Customers through competitive supply. The DTE approved the non-price terms of the Pilot Project, as included in the Compact’s August 15, 2001 filing, on October 23, 2001 in DTE 01-63 and on November 20, 2001 in DTE 01-63A (reconsideration).

1.24 **Point of Delivery** - The point of interconnection between NEPOOL Pool Transmission Facilities (“PTF”) and the transmission facilities of the Distribution Company.

1.25 **Point of Sale** - The electric meter for each Participating Consumer’s account, as designated by the Distribution Company.

1.26 **Restructuring Act** - Chapter 164 of the Massachusetts Acts of 1997.

1.27 **Supplier** – Mirant Americas Retail Energy Marketing, LP, a Delaware limited partnership, duly authorized to conduct business in the Commonwealth of Massachusetts.

ARTICLE 2 RIGHTS GRANTED

2.1 **General Description and Limitations** - The Supplier is hereby granted the exclusive right to provide All-Requirements Power Supply to Participating Consumers pursuant to the terms of the Compact's Pilot Project, expressly conditioned on the terms and conditions set forth in this Agreement. In accepting this grant, the Parties recognize that the Supplier is only authorized to supply All-Requirements Power Supply to Participating Consumers, and that the Distribution Company will continue to have the right and obligation to supply electricity to all Eligible Consumers or Participating Consumers who opt-out of the Pilot Project and remain on, or return to, Default Service, until changes in law, regulation or policy may allow otherwise. The Supplier further recognizes that this Agreement does not guarantee that any individual Eligible Consumer will be served by the Supplier. All existing and any new Eligible Consumers shall be automatically enrolled in the Pilot Project, unless they choose to opt-out. In the event the geographic boundaries of a Member Municipality change during the term of this Agreement, Supplier shall only be obligated to supply All-Requirements Service to those Participating Consumers located within such Member Municipality as such boundaries existed on the Effective Date of this Agreement. As between the Parties, the Supplier has the sole obligation of making appropriate arrangements with the Distribution Company, and any arrangements which may be necessary with the ISO so that Participating Consumers receive the electricity supplies to be delivered pursuant to this Agreement. The Compact specifically authorizes the Distribution Company to provide, and Supplier the right to obtain and utilize as required, twenty-four (24) months' of historic usage and billing data for each Participating Consumer in an electronic form. If further action is required by the Distribution Company to authorize Supplier to receive such historical energy consumption and billing data, the Compact agrees to use reasonable efforts, at Supplier's cost, to assist Supplier, if so requested by it, in obtaining such information for Participating Consumers, including, without limitation, assisting Supplier in obtaining permission from such Participating Consumers and/or the DTE, where necessary as a prerequisite to the provision of such information.

2.2 **Agency Relationship** - The Compact is authorized to act on behalf of the Member Municipalities in contracting for electric supply for Eligible Consumers. The Compact shall seek a resolution from each Member Municipality approving the Supplier as the opt-out competitive supplier for all Eligible Consumers subject to the terms of this Agreement. In any litigation arising under this Agreement, only the Compact has the right to bring claims against the Supplier.

2.3 **Compliance with Laws** - By entering into this Agreement, the Supplier specifically represents that it has exercised due diligence to review and has fully complied with all relevant regulations and orders of the Federal Energy Regulatory Commission, the DTE, the Office of the Massachusetts Attorney General, and the Massachusetts Division of Energy Resources and any other governmental authorities having jurisdiction over any element of the transactions contemplated by this Agreement.

2.4 **Condition Precedent** - The Parties' obligations under this Agreement shall be conditioned upon a) the Compact receiving approval of this Agreement including, without limitation, the pricing terms by the DTE prior to the close of business on December 1, 2003 and b) the price offered by Supplier as specified in Exhibit A being lower than the the Distribution Company's Default Service tariff rates for the period January 1, 2004 through June 30, 2004. If such approval by the DTE has not been obtained by the close of business on December 1, 2003, either Party may terminate this Agreement without any liability to the other Party.

ARTICLE 3 CUSTOMER CHOICE, NOTIFICATION OF OPT-OUT RIGHTS, ENROLLMENT

3.1 **Customer Choice** - The Parties acknowledge and agree that all Participating Consumers have the right, pursuant to the Restructuring Act, to change their source of electricity supply. The Compact, or Participating Consumers, as the case may be, shall give reasonable notice of any such changes in accordance with the procedures established by the Compact, the Distribution Company and the Supplier pursuant to the terms of the Pilot Project. The Parties represent and warrant to each other that they shall not unreasonably interfere with the right of Participating Consumers to opt-out of the Pilot Project, and shall comply with any rules, regulations or policies of the DTE, the Distribution Company and/or other lawful Governmental Authority regarding the procedures for opting out or of switching from one source of electric supply to another. Notwithstanding the foregoing, however, the Parties may make certain efforts with the intent of seeking commercial and industrial customers to affirmatively agree to remain in the Pilot Project, consistent with any Governmental Rules.

3.2 **Notification to Eligible Consumers of Opt-Out Rights** - Consistent with the requirements of any Governmental Rules and following, in a timely fashion, approval by the DTE of this Agreement, the Supplier shall continue to notify all new Eligible Consumers who are automatically enrolled in Default Service that Supplier will be providing electrical supply to such new Eligible Consumers subject to the opt-out provisions of the Restructuring Act, the Aggregation Plan and the Pilot Project. The opt-out notice shall be mailed to new Eligible Consumers shortly after the customer is auto-enrolled. The notification shall: (1) prominently state all charges to be made by the Supplier; (2) provide a summary of the price included in Exhibit A as well as fully disclose the prices and terms then being offered for Default Service by the Distribution Company; and (3) state how any new Eligible Consumer may opt-out of the Pilot Project after auto-enrollment and choose Default Service from the Distribution Company; and (4) state how all Participating Consumers will also have the right to opt-out at any time and return to Default Service or choose a new competitive supplier without paying a fee or penalty to Supplier. All such notices must be approved in advance by the Compact, such approval not to be unreasonably withheld. In providing the notifications set forth in this Article, and in otherwise conducting the activities in Article 3.3 below, neither the Supplier nor the Compact makes any warranty or representation, express or implied, about the accuracy of any data or other information provided to it by the Distribution Company and, accordingly, is not responsible for any errors or omissions in connection with the notification to new Eligible Consumers.

3.3 **Auto-Enrollment** - All new Eligible Consumers will be automatically enrolled in the Pilot Project at the price set forth in Exhibit A. Promptly upon approval of this Agreement by the DTE, the Compact shall notify the Distribution Company of such approval. Eligible Customers shall be auto-enrolled consistent with the existing auto-enroll procedures. In no event shall either Party be any way responsible for the accuracy or timeliness of any information provided by the Distribution Company or any omissions therein.

ARTICLE 4 TERM OF CONTRACT AND TERMINATION

4.1 **Term** - This Agreement and the rights granted under it to the Supplier shall terminate on December 31, 2004, unless (a) the Agreement is terminated or extended under the provisions of Article 4.3, or (b) the Agreement is terminated before such date under the provisions of Article 4.4.

4.2 **Acceptance and Effective Date** - This Agreement shall be effective and in full force upon execution by the Compact and the Supplier.

4.3 **Automatic Termination and/or Extension** -

A. If the Distribution Company's Default Service tariff rates for the period July 1, 2004 through December 31, 2004 are lower than the price offered by Supplier as specified in Exhibit A, this Agreement shall automatically terminate on June 30, 2004. In the event this Agreement automatically terminates as described above, Supplier and/or the Distribution Company shall promptly notify Participating Consumers that they will be transferred or returned to Default Service from the Distribution Company.

B. Provided that Supplier shall continue to offer a price at a discount to the Distribution Company's Default Service tariff rates, this Agreement may be extended one year beyond December 31, 2004 by mutual, written agreement of the Parties, further subject to the receipt of any and all required regulatory approvals. Such new pricing terms shall be added to and replace Exhibit A as Exhibit A-2. Upon such extension, this Agreement shall continue to be in effect, and all provisions of the Agreement shall retain the same force and effect as before the extension, unless it is terminated by either Party pursuant to the provisions of Article 4.4 or until the date stated in such extension.

4.4 **Events of Default** - An "Event of Default" shall mean, with respect to a Party, the occurrence of any of the following:

(1) the failure to perform any material provision or condition of this Agreement if such failure is not remedied within thirty (30) days following written notice to do so by the other party; or

(2) the failure of the Supplier to provide or arrange for All-Requirements Power Supply to Participating Consumers, in the absence of *Force Majeure* or the Compact's failure to perform, provided that such failure is not the result of actions or non-actions by any transmission service provider, the Distribution Company, or the ISO, and further provided that in the case of such failure there shall be no cure period.

4.5 Termination Following an Event of Default – Either Party may terminate this Agreement, upon written notice to the other Party, following an Event of Default. The Parties shall each discharge by performance all obligations due to any other Party that arose up to the date of termination of the Agreement. Upon the effective date of termination of the Agreement, all rights and privileges granted to the Supplier shall cease, with the exception of the right to collect all monies due for services rendered to that date. If this Agreement is automatically terminated under Article 4.3(A), the Supplier shall not be liable to the Compact, the Member Municipalities or any Participating Consumers for any damages resulting from such termination including, without limitation, any costs incurred by the Compact to obtain a replacement supplier, if any. Notwithstanding the foregoing, if this Agreement is terminated pursuant to Article 4.4, Supplier's sole and exclusive liability shall be, any direct, actual costs for electric energy that any such Participating Consumers incur in excess of the prices established in this Agreement as a result of the termination of this Agreement on account of a breach by Supplier. The Compact shall cooperate with Supplier to the fullest extent reasonably possible to ensure that Supplier is not subjected to duplicative claims, arising out of Supplier's breach of its delivery obligations to such Participating Consumers and/or Member Municipalities. In addition, the Supplier shall pay the Compact's reasonable out-of-pocket costs, not to exceed ninety thousand dollars (\$90,000), in obtaining or seeking to obtain a replacement supplier in the event this Agreement is terminated under Article 4.4. Upon request, the Compact shall provide reasonably detailed documentation to Supplier to support the costs incurred by the Compact to obtain a replacement supplier. Notwithstanding the foregoing, Mirant specifically reserves all rights it may have at law to claim that the Compact and/or Member Municipalities have no standing or otherwise lack the authority to seek monetary damages on behalf of individual Participating Consumers in the event of a termination of this Agreement.

4.6 Bankruptcy - THE COMPACT ACKNOWLEDGES THAT ON JULY 14, 2003, SUPPLIER FILED A VOLUNTARY PETITION FOR RELIEF UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE (CASE NO. 03-46590) (THE "FILING") AND THAT SUCH CASE IS PENDING IN THE UNITED STATES BANKRUPTCY COURT, NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION ("BANKRUPTCY COURT"). UNTIL SUCH TIME AS SUPPLIER EMERGES FROM CHAPTER 11 BANKRUPTCY THROUGH THE CONFIRMATION OF A PLAN OF REORGANIZATION, THE FILING SHALL NOT CONSTITUTE AN EVENT OF DEFAULT UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT IN THE EVENT THAT (A) SUPPLIER FILES A MOTION WHICH CONTEMPLATES THE SALE OF SUBSTANTIALLY ALL OF ITS ASSETS; (B) SUPPLIER FILES A CHAPTER 11 PLAN WHICH CONTEMPLATES THE SALE OF SUBSTANTIALLY ALL OF ITS ASSETS; (C) SUPPLIER FILES A MOTION OR REQUEST TO CONVERT ITS CHAPTER 11 CASE TO A CHAPTER 7 PROCEEDING; (D) THE BANKRUPTCY COURT ENTERS AN ORDER CONVERTING SUPPLIER'S CASE FROM A CHAPTER 11 PROCEEDING TO A CHAPTER 7 PROCEEDING; OR (E) THE BANKRUPTCY COURT ENTERS AN ORDER APPOINTING A TRUSTEE OR EXAMINER (WITH EXPANDED POWERS) IN SUPPLIER'S BANKRUPTCY CASE, ANY SUCH EVENT (A) THROUGH (E) SHALL CONSTITUTE AN EVENT OF DEFAULT UNDER THIS AGREEMENT.

4.7 Supplier Representation Regarding Bankruptcy Matters - Supplier believes that it has the full right and authority to enter into this Agreement without further approval of the Bankruptcy Court. However, if this Agreement requires approval, in Supplier's reasonable opinion, by the creditors' and equity committees and/or the Bankruptcy Court, neither Party will be bound under this Agreement until Supplier has obtained such approvals; and further, Supplier agrees to promptly seek such approvals if required or if Supplier's ability to enter into this Agreement without such approvals is challenged by a third party including, but not limited to, the DTE or any party to any proceedings regarding this Agreement. Each of Supplier and the Compact reserves the right to request the Bankruptcy Court approval.

ARTICLE 5 CONTINUING COVENANTS

The Supplier agrees and covenants to perform each of the following obligations during the term of this Agreement.

5.1 Standards of Management and Operations - In performing its obligations hereunder, during the term of this Agreement, the Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers a safe and reliable supply of such amounts of electricity to the Point of Delivery as are required under this Agreement; that it complies with all relevant industry standards and practices for the generation and supply of electricity to Participating Consumers; and that, at all times with respect to Participating Consumers, it exercises the highest commercial standards and employs Commercially Reasonable skills, systems and methods available to it. To the extent Supplier or its affiliates owns or controls the Canal generating facility, the Supplier shall ensure that the Canal generating facility conforms with all Governmental Rules related to emissions. In the event Supplier's affiliate is allegedly in violation of any Governmental Rules related to emissions, the Compact shall have the right to terminate this Agreement, provided, however, the Compact's termination right shall be suspended during the time period Supplier's affiliate is defending, in good faith, any alleged violations. If the alleged violation has not been resolved within six months from the initial report of the violation, the Compact's termination right shall be reinstated. If the Compact exercises its termination right pursuant to this Article 5.1, the Supplier shall not be liable to the Compact or the Member Municipalities for any damages resulting from such termination.

5.2 Local Customer Service Access - The Supplier agrees to provide, or cause to be provided, certain customer services to Participating Consumers. Such services shall be reasonably accessible to all Participating Consumers, shall be available during normal working hours, shall allow Participating Consumers to transact business they may have with the Supplier, and shall serve as a communications liaison among the Supplier, the Compact, and the Distribution Company. A toll-free telephone number will be available for Participating Consumers to contact Supplier to resolve concerns, answer questions and transact business with respect to the service received from Supplier. The customer services described above shall commence January 1, 2004 and shall continue for a period of ninety (90) days following the termination of this Agreement.

5.3 Responding to Requests for Information - To the extent authorized by the Participating Consumer(s) and to the extent such individual permission is required by law, the Supplier shall, during normal business hours, respond promptly and without charge therefore to reasonable requests of the Compact for information or explanation regarding the matters covered by this Agreement and the supply of electricity to Participating Consumers. The Supplier agrees to designate a service representative or representatives (the “Service Contacts”) who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s). Whenever necessary to comply with this Article 5.3, the service representative(s) shall call upon other employees or agents of the Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this Article 5.3 shall be interpreted as limiting the obligation of the Supplier to respond to complaints or inquiries from Participating Consumers, or to comply with any regulation of the DTE or Attorney General regarding customer service.

5.4 Arranging for Firm All-Requirements Power Supply - The Supplier shall participate in or make appropriate arrangements with the ISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of reliable, safe, firm, All-Requirements Power Supply to the Distribution Company for delivery to Participating Consumers, and take Commercially Reasonable steps to cooperate with the New England Power Pool (“NEPOOL”), the ISO or any other entity to ensure a source of back-up power in the event that the facilities owned or controlled by Supplier's affiliates or other sources of power supply are unable to generate and/or deliver All-Requirements Power Supply to the Point of Delivery. In the event the Supplier is unable to deliver sufficient electricity to the grid to serve Participating Consumers, the Supplier shall utilize such arrangements as may be necessary to continue to serve Participating Consumers under the terms of this Agreement, and shall bear any costs it may incur in carrying out these obligations. The Supplier shall not be responsible to the Compact, any Member Municipality or any Participating Consumers in the event the Distribution Company disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by the ISO) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Distribution Company's facilities, to maintain the safety and reliability of the Distribution Company's electrical system, or due to any other reason, including emergencies, forced outages, potential overloading of the Distribution Company's transmission and/or distribution circuits, *Force Majeure* or the non-payment of any distribution service costs or other such costs due for services provided by the Distribution Company to a Participating Consumer.

5.5 Non-Discriminatory Provision of Service - Subject to the prices and terms contained in Exhibit A, Supplier shall deliver electricity on a non-discriminatory basis; provided, however, that prices and other terms may vary in accordance with reasonably established classes of customers (e.g., residential, commercial, municipal, industrial) or by such other categories as appear in Exhibit A. To the extent applicable, the Supplier's prices, terms and conditions shall be in accordance with the Massachusetts General Laws, the regulations of the DTE, and other applicable Governmental Rules. To the extent required by any Governmental Rule and/or the conditions of any DTE approval of this Agreement, the Supplier may not deny service to an Eligible Consumer for failure to pay the bills of any other electric company (whether engaged in the distribution, transmission, or generation of electricity) or of any other aggregator, marketer or broker of electricity, but may reasonably deny or condition

service, or terminate existing service, based upon any Participating Consumer's failure to pay bills from the Supplier, subject to any Governmental Rules. Provision of electric energy supply shall be subject to Supplier's standard credit policies (to the extent permitted by law) as described in Exhibit A.

5.6 Energy Efficiency and Renewable Energy Programs - The Parties have a mutual interest in advancing the utilization of demand-side management, energy efficiency programs and technology, and renewable energy programs. The Supplier, upon reasonable request of the Compact, shall cooperate with the Compact regarding the implementation of such programs. At no time will Supplier take any actions with the intention of materially adversely affecting the operations of any of these programs. Supplier will use Commercially Reasonable efforts to identify any actions which might have a material adverse effect on the implementation of any programs involving demand-side management, energy efficiency and renewable energy and will use Commercially Reasonable efforts to consult with the Compact prior to taking such actions.

5.7 Approval of General Communications - The Supplier shall cooperate with the Compact in the drafting and sending of messages and information to Eligible Consumers and/or Participating Consumers concerning the Compact or any matter arising under or related to this Agreement. The Supplier shall, prior to sending any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "general communications") to Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual consumer), provide a copy of such general communication to the Compact for its review to determine whether it is consistent with the purposes and goals of the Compact. The Compact shall have the right to disapprove such general communications and suggest revisions if it finds the communication inconsistent with the purposes and goals of the Compact, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Compact fails to respond within seven calendar days (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; (b) which has been approved by the DTE, the Division of Energy Resources, or any other Governmental Authority; or (c) in the nature of routine monthly or periodic bills, or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) or (b) above shall require approval. If the Compact disapproves any general communication on the grounds it is inconsistent with the purposes and goals of the Compact, the Supplier, after consultation as provided in this Article 5.7, may nevertheless elect to send such general communication provided that it: (i) clearly indicates on such mailing that it has not been endorsed by the Member Municipality and/or the Compact, (ii) has previously provided all Participating Consumers a meaningful chance to opt not to receive such general communications, (iii) has stated in connection with such chance to opt not to receive such communications that "the Compact and the Member Municipalities want to protect Consumers from receiving marketing materials if you do not wish to do so," and (iv) has otherwise sought input from the Compact as to the means by which Consumers are given a chance to remove their names from any list which may receive general communications.

5.8 Bill Inserts and Messages - The Supplier agrees that if it bills or communicates with Participating Consumers directly, and unless prevented for regulatory or other such reasons from doing

so, it shall allow the Compact to include no less than three bill inserts per year into such billings, provided that the Compact pays the cost of printing and reproducing such insert and any incremental postage or handling costs the Supplier may incur as a result of including such insert. The Supplier further agrees that it shall, at its direct cost, if any, and to the extent that it does not conflict with planned use of any message space by the Supplier, provide the Compact access to any message space on any bills the Supplier sends to Participating Consumers, to the extent any bills it sends directly or indirectly through the Distribution Company or other entity contain a bill message space under the control of the Supplier. Supplier shall have the right to disapprove such general communications (that is communications other than those pertaining to the Compact's demand-side management, energy efficiency programs and technology, and renewable energy programs) and suggest revisions if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Supplier fails to respond within seven calendar days (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication which has been ordered by the DTE, the Division of Energy Resources, or any other Governmental Authority to be so communicated.

5.9 Consumer Lists - To the extent not prohibited by any Governmental Rule or expressly by any Participating Consumer(s), the Supplier shall, upon request of the Compact, provide a list of the Participating Consumers being served by the Supplier, including such reasonable identifying and aggregate consumption information as the Compact may also request to the extent such information is available to Supplier. The Supplier shall provide such consumer lists in an electronic format reasonably acceptable to both Parties and with no more frequency than once a month.

5.10 Compliance with Laws - The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this Agreement.

5.11 Consent - Whenever performance of an obligation of any Party hereto requires the consent or approval of any Governmental Authority, such Party shall make Commercially Reasonable efforts to obtain such consent or approval. In the event the Supplier requests the Compact's assistance in obtaining such consent or approval and the Compact anticipates that it (and/or the Member Municipalities) will incur costs in fulfilling the Supplier's request, it shall give the Supplier an estimate of such costs. Upon receiving the estimate, Supplier shall determine if it continues to request the Compact's assistance, and if so, the Supplier shall reimburse the Compact and/or the Member Municipalities for all costs, up to the estimated dollar amount, reasonably incurred by the Compact and/or Member Municipalities in connection with such efforts.

ARTICLE 6 ROLES OF THE COMPACT AND THE MEMBER MUNICIPALITIES

6.1 In General - Under this Agreement, neither the Compact nor the Member Municipalities (except as they or entities under their control are Participating Consumers) shall actually receive, take title to, or be liable for the supply or delivery of All-Requirements Power Supply in any manner

whatsoever. The Parties specifically agree that the role of the Compact is to a) set the terms and conditions under which All-Requirements Power Supply will be provided by the Supplier under this Agreement and to ensure that the Supplier complies with those terms and conditions, and b) act as agent for the Member Municipalities with respect to the matters addressed in this Agreement. It is the sole obligation of the Supplier to arrange for delivery of All-Requirements Power Supply to Participating Consumers. The Parties agree that neither the Compact nor the Member Municipalities are “aggregators,” “distribution companies,” “electric companies,” “generation companies” or “transmission companies” within the meaning of G.L. c. 164, §1 as a result of this Agreement, unless a court, the DTE, or other lawful authority shall adjudicate to the contrary; provided, however, that the Member Municipalities and the Compact may be considered to be operating a municipal load aggregation program pursuant to G.L. c. 164, §134. The Supplier hereby agrees that it will take no action that would make the Compact or the Member Municipalities liable to any Eligible or Participating Consumer due to any act or failure to act on the part of the Supplier relating to the delivery or supply of All-Requirements Power Supply.

ARTICLE 7 PRICES AND SERVICES; BILLING

7.1 Schedule of Prices and Terms - The Supplier agrees to provide All-Requirements Power Supply and other related services as expressly set forth herein in accordance with the price included in Exhibit A to this Agreement, which Exhibit is hereby incorporated by reference into this Agreement.

7.2 Obligation to Serve - As between the Parties, the Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide All-Requirements Power Supply for all of the Participating Consumers under the Pilot Project. The Supplier shall make appropriate arrangements to obtain such capacity, electrical energy, and ancillary services for load-following purposes, including, but not limited to, spinning reserves, supplemental reserves, backup supplies and services as may be needed in the event of outages or emergencies, and all other ancillary services as necessary to provide a firm, reliable, and safe All-Requirements Power Supply for Participating Consumers to the Point of Delivery. The Supplier, except as explicitly limited by the terms included in Exhibit A, shall be obligated to accept all Eligible Consumers who become participants in the Compact’s Pilot Project, subject to the terms of any approval or other order of the DTE with respect to this Agreement.

7.3 Metering and Billing - As between the Parties, the Supplier bears sole responsibility for any metering which may be required to bill Participating Consumers, and for rendering of any bills to Participating Consumers. Supplier may discharge this obligation by making appropriate arrangements with the Distribution Company or any other entity. Any metering and billing functions carried out by the Supplier shall be conducted in compliance with relevant rules and regulations of the DTE and the Attorney General of the Commonwealth.

7.4 Standard Terms and Conditions Pertaining to Individual Account Service -

A. Title

Title to All-Requirements Power Supply will transfer from Supplier to Participating Consumers at the Point of Sale. Possession of, and risk of loss related to, All-Requirements Power Supply will transfer from Supplier to the Distribution Company at the Point of Delivery.

B. Term

Delivery of All-Requirements Power Supply will begin on the first meter reading date in January, 2004, as specified in Exhibit A, or as soon as necessary arrangements can be made with the Distribution Company thereafter and will end on the last meter reading date prior to the expiration or termination of this Agreement. Supplier has the right to request a “special” meter reading by the Distribution Company to initiate energy delivery and agrees to accept all costs (if any) for such meter reading.

C. Billing and Payment

Unless otherwise specified in an Exhibit to this Agreement, all billing under this Agreement shall be based on the meter readings of each Participating Consumer’s meter performed by the Distribution Company. The Supplier shall, or shall cause the Distribution Company or any other entity to, prepare and mail bills to Participating Consumers monthly. If Supplier arranges for the Distribution Company to perform billing services, Supplier shall adopt the billing and payment terms offered by the Distribution Company to its Default Service customers unless the Supplier and Distribution Company otherwise agree. Supplier shall make such billing and payment terms available to Participating Consumers on its website.

D. Regional and Local Transmission

The prices quoted in Exhibit A do not include current and future charges for distribution service costs collected by the Distribution Company under its distribution service tariff. If in the future Supplier becomes responsible for distribution costs, Supplier shall be entitled to collect such costs from Participating Consumers to the extent permitted by any Governmental Rules. These costs are “pass through” costs as determined by the appropriate regulatory agencies.

E. Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of All-Requirements Power Supply shall be included on the Participating Consumer’s bill and shall be remitted to the appropriate taxing authority by Supplier. Participating Consumers shall be responsible for all taxes (except for taxes on Supplier’s income) associated with sales of All-Requirements Power Supply under this Agreement. Supplier shall make available a service to provide Participating Consumers who are tax-exempt with an exemption from collection of any taxes, however such Participating Consumers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Supplier.

F. Material and Adverse Change in Law or Regulation

If at any time during the term of this Agreement (i) a final and unappealable Governmental Rule is instituted, repealed, revised or changed or any other similar unanticipated change in circumstance of a significant magnitude and beyond the reasonable control of the Parties occurs and (ii) such event results in a substantial and material adverse economic impact to the Compact, any Member Municipality or Supplier under this Agreement such that, directly as a result of such Governmental Rule the affected party expects to incur a loss in continuing performance under this Agreement for the remaining term thereof, then the affected party may, upon written notice to the others, invoke this Article 7.4(F) as a basis for immediately initiating good faith negotiations to amend the affected terms of this Agreement. The Parties will negotiate to balance the disparity caused by the event and to restore to the Parties, to the greatest extent possible, the benefit of their respective bargains on the Effective Date. If the Parties are unable to agree on any amendment to this Agreement, any Party may terminate this Agreement, subject to any applicable regulatory requirements and after providing sixty (60) days prior written notice to the DTE and the other Party, without any liability or responsibility except for obligations arising prior to the date of termination and those obligations which expressly survive termination of this Agreement.

G. Limitation of Liability

Recognizing that electricity provided hereunder shall be ultimately delivered by the Distribution Company, to the extent permitted by law, Supplier shall not be liable for any damage to a Participating Consumer's equipment or facilities, or any economic losses, resulting directly or indirectly from any service interruption, power outage, voltage or amperage fluctuations, discontinuance of service, reversal of service, irregular service or similar problems beyond Supplier's reasonable control. TO THE EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, SUPPLIER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED (INCLUDING WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE) WITH RESPECT TO THE PROVISION OF SERVICES AND ELECTRIC ENERGY HEREUNDER.

H. No Exemplary, Punitive, Special or Consequential Damages

THE PARTIES SHALL ONLY BE ENTITLED TO RECOVER ACTUAL DAMAGES FOR A BREACH OR VIOLATION OF THIS AGREEMENT. NO PARTY SHALL BE ENTITLED TO RECOVER EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES FROM THE OTHER PARTY IN ANY ARBITRATION PROCEEDING, COURT PROCEEDING, OR OTHERWISE, HOWEVER CAUSED, WHETHER BY A PARTY'S SOLE OR CONCURRENT NEGLIGENCE OR OTHERWISE, AND EACH PARTY HEREBY WAIVES ANY CLAIM OR RIGHT TO EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES HEREUNDER.

I. Consumer Credit Checks

Supplier agrees to comply with the requirements of 220 CMR 11.05(3)(d) regarding termination of service to residential customers. To the extent permitted by law, Supplier may, subsequent to the scheduled initiation of service, request access to a Participating Consumer's credit history and may request a security deposit from a non-residential Participating Consumer, in either case only if the Participating Consumer fails to make timely payments on two or more bills. No requested security deposit may exceed two months of actual bills. Supplier may terminate service to a non-residential Participating Consumer who fails to provide the security deposit amounts authorized by this paragraph.

J. EDI/EFT

Supplier will provide Electronic Funds Transfer ("EFT") as a payment option to Participating Consumers provided the Participating Consumer and Supplier can mutually access a common Value Added Network ("VAN") and provided further that Supplier is allowed to pass through the costs imposed by VAN providers or the provider of other electronic transmission vehicle. To the extent mutually agreed to by the Parties, Participating Consumers who use EFT as a payment method will receive a percentage discount determined by the Supplier.

ARTICLE 8 DEVELOPMENT OR OFFERING OF RENEWABLE ENERGY SOURCES

8.1 **Compliance with Law** - The Supplier hereby agrees that it will comply with the applicable provisions of G.L. c. 25A, §11F and any regulations, orders or policies adopted pursuant thereto.

ARTICLE 9

SERVICE PROTECTIONS FOR RESIDENTIAL CUSTOMERS

To the extent applicable, Supplier agrees that it shall comply with the provisions of 220 CMR Parts 25, 27, 28 and 29, any amendments thereto, and any code of conduct or policies the DTE may adopt in accordance with G.L. c. 164, §1F(7). The Supplier shall, on or before March 13, 2002, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Compact (which approval shall not be unreasonably withheld). Such written description shall also include the Supplier's plans for maintaining "service quality standards," as that phrase is used in §1F(7); for complying with the "affirmative choice" requirements of §1F(7); and for handling customer complaints, including any arbitration procedures. If the Participating Consumer(s) so permit(s) to the extent such permission is required by law or the terms of any DTE order with respect to this Agreement, the Supplier agrees to provide notice to the Compact of any customer complaints received from a Participating Consumer, and to grant the Compact the right to participate in resolution of the dispute, to the extent permitted by DTE regulations and other applicable law. The failure to timely submit such written description, or the submission of practices and procedures which materially fail to comply with DTE regulations and policies, shall be deemed grounds for termination of this Agreement, at the discretion of the Compact after providing written notice of such failure to the Supplier and allowing the Supplier thirty days to cure such failure.

ARTICLE 10 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

The Supplier agrees to conduct its operations and activities under this Agreement in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees.

ARTICLE 11 ACCESS TO INFORMATION

11.1 Power Supply Report - Supplier shall present a copy of the current “Disclosure Label” required by the DTE of all Competitive Suppliers to be disclosed to their customers which includes information pertaining to their power supply and a reasonably detailed description of the sources of Supplier’s power supply used to serve Participating Consumers pursuant to this Agreement, except to the extent such disclosure would violate any confidentiality obligations of Supplier.

11.2 Books and Records - The Supplier shall keep its books and records in accordance with any applicable regulations or guidelines of the DTE, the Federal Energy Regulatory Commission, and any other Governmental Authority. The Compact will have access to all reports mandated by the Securities and Exchange Commission which are available on the Internet “EDGAR” system.

11.3 Copies of Regulatory Reports and Filings - Upon reasonable request, the Supplier shall provide to the Compact a copy of each public periodic or incident-related report or record relating to this Agreement which it files with any Massachusetts or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless the Supplier is required by law or regulation to keep such reports confidential from the other Parties. The Compact or any Member Municipality to whom the Compact has provided access shall treat any reports and/or filings received from Supplier as confidential information subject to the terms of Article 16. Supplier shall be reimbursed its reasonable costs of providing such copies.

ARTICLE 12 RESOLUTION OF DISPUTES; CHOICE OF LAW

12.1 Choice of Law - This Agreement and the rights of the Parties shall be interpreted and determined in accordance with the laws of the Commonwealth of Massachusetts.

12.2 Dispute Resolution - The Parties shall attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity hereof by negotiation between representatives who will have the authority to resolve the dispute. Any Party may give the other Party written notice of any dispute not resolved in the ordinary course of business. Within ten (10) days after delivery of such notice, the representatives shall attempt to meet at a mutually acceptable time and place to resolve the dispute. If such designated representatives are unable to resolve the dispute within thirty (30) days of receipt of notice of the dispute, either party may bring an action in any court in Suffolk County in the Commonwealth of Massachusetts. In any such judicial action, the “Prevailing Party” shall be entitled to payment from the opposing Party of its reasonable costs and fees,

including, but not limited to, attorneys' fees, arising from the civil action. As used herein, the phrase "Prevailing Party" shall mean the Party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action. Notwithstanding the preceding sentence, the costs and fees payable by the opposing Party shall not exceed an aggregate amount of \$250,000 for all civil actions arising under this Agreement.

ARTICLE 13 INDEMNIFICATION

13.1 Indemnification by Supplier - Subject to the limitation of damages in Article 7.4(H), Supplier shall indemnify, defend and hold harmless the Member Municipalities and the Compact (collectively "Indemnified Parties" and singularly "Indemnified Party") and each Indemnified Party's officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising, directly or indirectly, from or in connection with (i) any material breach by Supplier of its obligations, covenants, representations or warranties contained in this Agreement and not resulting from the actions and/or non-actions of the Distribution Company, the Compact or any Member Municipality or their employees or agents, or (ii) Supplier's actions or omissions taken or made in connection with Supplier's performance of this Agreement. Supplier further agrees, if requested by the Compact or any Member Municipality, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article 13.1. Should Supplier defend any such claim against the Compact or any Member Municipality hereunder, it shall have full control of such defense, in its reasonable discretion.

13.2 Notice of Indemnification Claims - If the Compact seeks indemnification pursuant to this Article 13, it shall notify Supplier of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. Upon written acknowledgment by the Supplier that it will assume the defense and indemnification of such claim, the Supplier may assert any defenses which are or would otherwise be available to the Compact.

13.3 Survival - Notwithstanding any provision contained herein, the provisions of this Article 13 shall survive the termination of this Agreement for a period of three (3) years with respect to any claims which occurred or arose prior to such termination.

ARTICLE 14 REPRESENTATIONS AND WARRANTIES

14.1 Representations and Warranties -

A. As a material inducement to entering into this Agreement, the Supplier hereby represents and warrants to the Compact as of the Effective Date of this Agreement as follows:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this Agreement;

(ii) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;

(iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;

(iv) subject to the conditions set forth in Article 2.4, this Agreement constitutes a legal, valid and binding obligation of the Supplier enforceable against it in accordance with its terms, and the Supplier has all rights such that it can and will perform its obligations to the Compact in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity.

B. As a material inducement to entering into this Agreement, the Compact hereby represents and warrants to Supplier as of the effective date of this Agreement as follows:

(i) the Compact was formed by intergovernmental agreement in accordance with the laws of the Commonwealth of Massachusetts;

(ii) this Agreement will (subject to the Governmental approvals described in Article 2.4 above) constitute the legal, valid and binding obligation of the Compact enforceable in accordance with its terms;

(iii) the execution, delivery and performance of this Agreement are within the Compact's powers, have been or will be duly authorized by all necessary action and the Compact is the duly authorized agent of the Member Municipalities with respect to the matters addressed in this Agreement;

(iv) the Compact has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and

(v) to the best of its knowledge, but without independent inquiry, no Bankruptcy is pending or threatened against any of the Member Municipalities.

C. Each Party further represents and warrants:

(i) The Parties have negotiated and entered into this post-petition Agreement in the ordinary courses of their respective businesses, in good faith, for fair consideration and on an arm's length basis; and

(ii) Neither Party shall attempt to effect any right of set-off with respect to this such post-petition Agreement and any pre-petition obligations.

ARTICLE 15 INSURANCE AND RESERVE FUND

15.1 **Insurance** - In order to help support the indemnifications provided in Article 13, and its other promises and covenants stated herein, Supplier shall secure and maintain, at its own expense, throughout the term of this Agreement, comprehensive commercial general liability insurance of at least \$5,000,000 combined single limit and excess liability coverage of at least \$5,000,000 with insurers and with the Compact and Member Municipalities named as additional insureds. Supplier shall provide the Compact with evidence, reasonably satisfactory to the Compact, of its insurance hereunder, upon request. The detailed terms of Supplier's insurance are set forth in Exhibit B attached hereto.

15.2 **Reserve Fund** - In order to ensure timely access to funds and: (a) provide the Compact with further financial security in the event Supplier declines to or otherwise fails to indemnify it pursuant to Article 13 and that the insurance coverage pursuant to Article 15.1 is unavailable or insufficient, and (b) provide the Compact with a special reserve fund ("Reserve Fund") to give further assurances that the Compact will be able to respond appropriately to any risks associated with this Agreement, Supplier agrees to collect on behalf of the Compact, one mill (\$.001) or such lesser number as the Compact may specify (including zero) for every kWh sold to Participating Consumers during calendar year 2004. Supplier shall remit to the Compact or its designee on a monthly basis, by electronic funds transfer or such other mutually acceptable method, the amounts due pursuant to this Article 15.2 and provide reasonable supporting documentation as to the total number of kWh sold in each preceding month upon which such payment is calculated.

Once paid to the Compact or its designee, Supplier shall have no further interest or claim in such Reserve Fund. The Compact may use the Reserve Fund to cover any costs, claims, liabilities, damages, expenses (including reasonable attorney's fees), causes of action, suits or judgments, incurred by or on behalf of the Compact or Member Municipalities. The Compact shall cause all funds collected for it by Supplier hereunder to be deposited in a dedicated, interest-bearing account and shall keep records of the receipts, expenditures and balance in such account which shall be provided on a quarterly basis to Supplier and any governmental agencies which may request such records. These records shall be a matter of public record pursuant to G.L. c. 4, §7, cl. 26 and G.L. c. 66, §10. To the extent there

are funds remaining in the Reserve Fund at the expiration or termination of this Agreement (and after the running of any statute of limitations periods which the Compact may deem appropriate or prudent), the Compact may expend such funds and/or rebate them to Participating Consumers for any purpose as may be allowed by law and shall be determined in the sole reasonable discretion of the Compact's Governing Board.

ARTICLE 16 CONFIDENTIALITY

Supplier acknowledges that the Compact is subject to public records laws, including without limitation, G.L. c. 4, §7, cl. 26 and G.L. c. 66, §10. To the extent not prohibited by such laws, all Parties shall keep confidential, and shall not disseminate to any third party (other than such Party's affiliates) or use for any other purpose (except with written authorization, such authorization not to be unreasonably withheld), any information received from the other that is confidential or proprietary in nature unless legally compelled (by deposition, inquiry, request for production of documents, subpoena, civil investigative demand or similar process, or by order of a court or tribunal of competent jurisdiction, or in order to comply with applicable rules or requirements of any stock exchange, government department or agency or other Governmental Authority, or by requirements of any securities law or regulation or other Governmental Rule) or as necessary to enforce the terms of this Agreement. Either Party may disclose the terms of this Agreement to (i) its affiliates, and to its and their officers, directors, employees, attorneys and accountants, and (ii) the Member Municipalities, who are bound to hold, treat and protect such information on a confidential basis. This Article 16 shall survive the termination of this Agreement for a period of two (2) years. If any Party is compelled to disclose any confidential information of the other Party, such Party shall request that such disclosure be protected and maintained in confidence to the extent reasonable under the circumstances and use reasonable efforts to protect or limit disclosure with respect to commercially sensitive terms. In addition, notwithstanding the public records laws referenced above, such Party shall provide the other Party with prompt notice of the requirement to disclose confidential information in order to enable the other Party to seek an appropriate protective order or other remedy, and such Party shall consult with the other Party with respect to the other Party taking steps to resolve the scope of any required disclosure. In the event the Supplier requests the Compact's assistance in protecting the confidentiality of information and the Compact anticipates that it and/or the Member Municipalities will incur costs in fulfilling the Supplier's request, it shall give the Supplier an estimate of such costs. Upon receiving the estimate, Supplier shall determine if it continues to request the Compact's assistance, and if so, the Supplier shall reimburse the Compact and/or Member Municipalities for all costs, up to the estimated amount, reasonably incurred by the Compact and/or Member Municipalities in connection with such efforts.

For the avoidance of doubt, the information related to this Agreement that is considered confidential and proprietary in nature shall include the following:

- (i) any account information related to the Participating Consumers including, without limitation, historic usage data, metering, and billing and payment information;
- (ii) any information regarding transactions entered into by Supplier and any third parties in connection with the provision of All-Requirements Power Supply;

- (iii) any list of Participating Consumers;
- (iv) any information disclosed by a Party during any settlement discussions;
- (v) Supplier's insurance policies;
- (vi) any non-public information provided by Supplier pursuant to Section 15.2 of this Agreement; and
- (vii) any information which either Party should reasonably understand to be confidential and proprietary by virtue of the sensitive nature of the information.

ARTICLE 17 MISCELLANEOUS

17.1 No Assignment Without Permission - Neither Party shall assign its rights and privileges under this Agreement without the prior written approval of the other Party and such approval may be denied in the reasonable discretion of the non-assigning Party if it determines that the proposed assignee does not have at least the same financial ability as the assigning Party and, in the event of a proposed assignment by Supplier, that it does not meet the objectives as set forth in Article 1 of the Compact Agreement. Notwithstanding the foregoing, the Compact may not unreasonably withhold its consent to an assignment to an affiliated entity under common control or management with Supplier. Further, a sale of 50% or more of the interests of Supplier in this Agreement shall be considered an assignment if, and only if, such sale results in a change in the control and the management of Supplier's operation. Any assignee shall agree in writing to be bound by the terms and conditions of this Agreement. The rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

17.2 Direct Marketing - Prior to the introduction of any new product or service which Supplier may wish to make available to Participating Consumers or other consumers located with a Member Municipality, Supplier agrees to (i) give the Compact written notice of such new product or service and (ii) subject to the entry into reasonable confidentiality terms to the extent permitted by law and mutually acceptable to the Parties, discuss with the Compact the possible inclusion of such new product or service in this or another aggregation program undertaken by the Compact and Member Municipalities in the geographic area encompassing the Member. The Parties agree to negotiate in good faith the terms, conditions, and prices for such products and services which the Parties agree should be included in a Compact aggregation program.

The Supplier also agrees not to engage in any direct marketing to any Participating Consumer that relies upon the Supplier's unique knowledge of, or access to, Participating Consumers (including addresses, telephone numbers or other identifying information) gained as a result of this Agreement, if so requested by such Participating Consumer as set forth in Article 5.7 hereof. For the purposes of this provision, "direct marketing" shall include any telephone call, mailing, electronic mail, or other contact between the Supplier and the Consumer. Broad-based programs of the Supplier that do not rely on unique knowledge or access gained through this Agreement will not constitute such "direct marketing." Supplier further expressly agrees not to sell, disclose or otherwise transfer identification or identifiable information about Participating Consumers (including addresses, telephone numbers or other identifying

information) gained as a result of this Agreement except with the express permission of the Participating Consumer.

17.3 Notices - All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and

if to Supplier to:

Mirant Americas Retail Energy Marketing, LP
Attention: Legal Department
1155 Perimeter Center West, Suite 130
Atlanta, Georgia 30338

if to the Compact to:

Ms. Margaret T. Downey
Administrator
Cape Light Compact
P.O. Box 427
Superior Court House
Barnstable, Massachusetts 02630
(508) 375-6636 (voice)
(508) 362-4136 (fax)
mags@cape.com

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Any party may change its address and contact person for the purposes of this Article 17.3 by giving notice thereof in the manner required herein.

17.4 Changes in Emergency and Service Contact Persons - In the event that the name or telephone number of any emergency or service contact for the Supplier changes, Supplier shall give prompt notice to the Compact in the manner set forth in Article 17.3. In the event that the name or telephone number of any such contact person for the Compact changes, prompt notice shall be given to the Supplier in the manner set forth in Article 17.3.

17.5 Entire Agreement; Amendments - This Agreement and the Related Documents, as set forth in Article 17.13, constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the

Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by all Parties hereto.

17.6 **Force Majeure** - If by reason of *Force Majeure* any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the *Force Majeure*, gives all other Parties hereto written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure*; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations.

17.7 **Expenses** – Every Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including, without limitation, all attorneys’ fees and expenses.

17.8 **No Joint Venture** - Supplier will perform all services under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Compact and the Supplier hereunder are individual and neither collective nor joint in nature.

17.9 **Joint Workproduct** - This Agreement shall be considered the workproduct of all Parties hereto, and, therefore, no rule of strict construction shall be applied against any Party hereto.

17.10 **Counterparts** - This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

17.11 **Waiver** - No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party(ies) so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

17.12 **Cooperation** - Each Party acknowledges that this Agreement must be approved by the DTE and agree that they shall use Commercially Reasonable efforts to cooperate in seeking to secure such approval.

17.13 **Related Documents** - The Supplier agrees that it has been provided with and had a reasonable opportunity to read the Compact Agreement, the Aggregation Plan, the Participation Agreement between Barnstable County, Cape Light Compact, County of Dukes County and Vineyard Towns, and the Administrative Services Agreement between Barnstable County and Cape Light

Compact, and the Pilot Project (collectively, “Related Documents”). The Parties agree that the Related Documents, in the forms as they exist on the Effective Date of this Agreement, are incorporated into this Agreement by reference, and that they shall be construed harmoniously to the greatest practicable extent; notwithstanding the foregoing, in the event of any conflict between this Agreement and the Related Documents, this Agreement shall govern. The Compact will provide Supplier with amendments to any of the foregoing documents as they are adopted; provided, however, that such amendments are not incorporated into this Agreement as a result of such adoption. Any amendments hereto must be made in accordance with Article 17.5 of this Agreement.

17.14 Advertising Limitations - The Supplier agrees not to use the name of the Cape Light Compact, or make any reference to the Cape Light Compact in any advertising or other information to be distributed publicly for marketing or educational purposes, unless the Compact expressly agrees to such usage. Any proposed use of the name of the Cape Light Compact must be submitted in writing for agreement and prior approval, which shall not be unreasonably withheld, consistent with Article 5.7 hereof. The Compact acknowledges that the Supplier’s corporate affiliates own the exclusive right to the trademarked logo and trade name used by Supplier. No right, license or interest in this trademark and/or trade name is granted to the Compact hereunder, and the Compact agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

17.15 Press Releases - The Parties shall not issue a press release or make any public statement with respect to this Agreement without the prior written agreement of the other Party with respect to the form, substance and timing thereof, except either Party may make any such press release or public statement when the releasing Party is advised by its legal counsel that such a press release or public statement is required by law, regulation or stock exchange rules, provided however, in such event, the Parties shall use their reasonably good faith efforts to agree as to the form, substance and timing of such release or statement.

17.16 Headings and Captions - The headings and captions appearing in this Agreement are intended for reference only, and are not to be considered in construing this Agreement.

17.17 Survival of Obligations - Termination of this Agreement for any reason shall not relieve the Company or Supplier of any obligation accrued or accruing prior to such termination.

17.18 Duty to Mitigate - Each Party agrees that it has a duty to mitigate damages and covenants that it will use Commercially Reasonable efforts to minimize any damages it may incur as a result of the other Party’s performance or non-performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written below.

MIRANT AMERICAS RETAIL ENERGY MARKETING, LP
BY: MIRANT AMERICAS DEVELOPMENT, INC.
ITS GENERAL PARTNER

By: _____

Name: _____

Title: _____

Dated: _____

CAPE LIGHT COMPACT

By: _____

Ms. Margaret T. Downey

Administrator

Cape Light Compact

P.O. Box 427

Superior Court House

Barnstable, MA 02630

(508) 375-6636 (voice)

(508) 362-4166 (fax)

mags@cape.com

Dated: _____

**EXHIBIT A
PRICES**

Pilot Project for Default Service Customers

******Residential****** ******Commercial/Industrial******
R-1, R-2R-3, R-4, R-5 G-1 G-2, G-3 G-4, G-5, G-6, G-7 S1, S2

January 1, 2004 – December 31, 2004

5.751 cents per kilowatt hour for all rate classes

Note: The price of 5.751 includes a one mill (\$.001) adder, pursuant to the Compact's request, for the purpose of establishing a Reserve Fund pursuant to Section 15.2 of the Agreement. At the Compact's request, this adder may be reduced or eliminated.

EXHIBIT B INSURANCE

1. The Supplier shall maintain commercial general liability insurance throughout the term of the Agreement and for a period of at least two (2) years following the contract term.
2. The insurance may be provided on a claims made basis. In the event such insurance is cancelled or non-renewed, Supplier agrees to provide a 36 month discovery period endorsement for obligations under this Agreement.
3. The insurance shall include coverage for bodily injury liability, property damage liability, advertising injury liability and personal injury liability.
4. To the extent available at commercially reasonable terms and conditions, personal injury liability coverage shall include non-employment discrimination in accordance with AEGIS form 8100 (1/1/98).
5. To the extent available at commercially reasonable terms and conditions, the insurance shall include Failure to Supply coverage and such coverage shall be in accordance with AEGIS form 8100 (1/1/98).
6. The insurance shall include blanket contractual liability coverage, including the power supply agreement between Supplier and Cape Light Compact.
7. The limit of commercial general liability insurance shall be at least \$5 million each occurrence. Separate aggregate limits of \$5 million may be applicable to products and completed operations liability coverage and failure to supply liability coverage.
8. The Supplier shall maintain umbrella or excess liability insurance subject to a limit of at least \$5 million in addition to commercial general liability insurance policy limits.
9. Such liability insurance shall include Cape Light Compact and member municipalities as additional insureds, but only for obligations arising out of this agreement.
10. The policies shall be endorsed to require that such additional insureds receive at least 30-days notice of cancellation or non-renewal.
11. Such insurance shall contain a standard separation of insureds clause, whereby the actions of one insured will not negate coverage for another insured.
12. The Supplier shall provide Cape Light Compact with a certificate of insurance to evidence compliance with the requirements. Renewal certificates shall be provided automatically within 30 days of policy renewal throughout the term of the contract and two (2) years following the contract term.